

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

JAN 15 2003

Walter H. Sonnenfeldt
Walter Sonnenfeldt & Associates
14732 Jaystone Drive
Silver Spring, Maryland 20905

Re: Request for Waiver of FY 2002
Regulatory Fees
Fee Control No. 00000RROG-02-105

Dear Mr. Sonnenfeldt:

This is in response to your request dated September 30, 2002 on behalf of ORBCOMM LLC and ORBCOMM License Corp. (ORBCOMM) to waive and defer payment of the applicable Fiscal Year 2002 (FY 2002) regulatory fee payments associated with FCC Call Signs S2103, E940534-E94038, and E990057-E990061. These fees total \$15,400.00. You argue that the regulatory fees will be a financial hardship because ORBCOMM operates on a negative cash flow basis.

In support of this statement, you submit a declaration from Don Franco, ORBCOMM's Chief Financial Officer, and request that we provide confidential treatment to this declaration. Pursuant to Section 0.459(d)(1) of the Commission's rules, 47 C.F.R. 0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime. If a request for access to the information submitted in conjunction with your petition is received, you will be notified and afforded the opportunity to respond at that time.

In establishing its regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship on a licensee. Thus, the Commission decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), reconsideration granted, 10 FCC Rcd 12759 (1995). The Commission further held that regulatees can establish financial **need** by submitting:

[I]nformation such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.

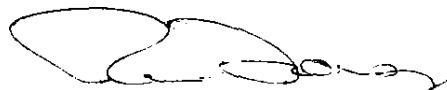
10 FCC Rcd at 12761-12762.

In determining whether a licensee has sufficient revenues *to* pay its regulatory fees, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits. Thus, although deductions for amortization and depreciation, and payments to principals reduce gross income for tax purposes, those deductions also represent money which is considered to be available to pay the regulatory fee.

The pleading and supporting declaration did not provide this information. In the absence of appropriate documentation, you have failed to establish a compelling case of financial hardship. Therefore, your request for waiver of ORBCOMM's regulatory fees is dismissed. Payment of ORBCOMM's FY 2002 regulatory fees are now due. The \$15,400.00 should be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. In view of your allegations of financial hardship, however, in lieu of payment, you may refile ORBCOMM's request together with appropriate supporting documentation **and** a request to further defer payment of the fee, within 30 days from the date of this letter.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

Enclosure

WALTER SONNENFELDT & ASSOCIATES

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Silver Spring, Maryland 20905-7410
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RECEIVED

September 30, 2002

SEP 30 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

HAND DELIVERED

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street., S.W.
Room TWB-204
Washington, D.C. 20554

Re: ORBCOMM NVNG MSS System
FCC Call Sign 52103

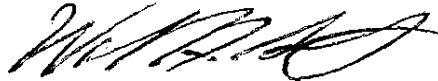
Petition For Fee Payment Deferral

Dear Ms. Dortch:

Respectfully transmitted herewith, on behalf of our clients ORBCOMM LLC and ORBCOMM License Corp., is an original and four(4) duplicate copies of a submission to be directed to Mr. Andrew S. Fishel, the Commission's Managing Director. Also enclosed as the top copy of this package, is a fifth duplicate copy to be date-stamped and returned to our courier.

Kindly direct any inquiries concerning this submission to the undersigned.

Very truly yours,



Walter H. Sonnenfeldt
Counsel to ORBCOMM LLC &
ORBCOMM License Corp.

Enclosures (5)

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 70554

SEP 30 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)

ORBCOMM NVNG MSS System) File No. _____
FCC Cali Sign S2103 – Request For
Filing Fee Deferral In Connection With)
Submission Of Request For Extension Of)
of Launch Authority)
FRN Nos. 0004-9524-79 & 0004-3792-02)

To: The Managing Director

PETITION FOR DEFERRAL OF FEE PAYMENT DUE TO FINANCIAL HARDSHIP

Pursuant to Section 1.1117 of the Commission's Rules, 47 C.F.R. 1.1117, and Section 158(d)(2) of the Communications Act of 1934 (as amended), 47 U.S.C. 158(d)(2), ORBCOMM LLC and its wholly-owned subsidiary ORBCOMM License Corp. (collectively "Petitioner"), by their undersigned counsel, hereby petition the Commission for deferral of any fee payment that may be associated with the submission of the above-referenced concurrently-filed 'Request For Extension of Launch Authority' (the "ORBCOMM Request"). By a separate concurrently-filed pleading, Petitioner is seeking a waiver of the subject Regulatory Fee payment obligations.¹ 47 C.F.R. §1.1117. Good cause exists for approval of the requested fee payment deferral pending disposition of Petitioner's separately-filed fee waiver request, and the public interest will be well served by grant of the instant petition

¹ The showings contained in or associated with Petitioner's concurrently-filed *Petition For Fee Waiver Due To Financial Hardship* are respectfully incorporated herein by reference.

The ORBCOMM Request seeks extension of performance milestones associated with the FCC authorization for the ORBCOMM NVNG mobile satellite service system (the “ORBCOMM System”), issued under FCC Call Sign S2103 (the “License”). Petitioner acquired the License earlier this year, pursuant to a Commission-approved assignment in connection with Chapter 11 Bankruptcy proceedings before the United States Bankruptcy Court for the District of Delaware relating to the ORBCOMM System assets (the “Bankruptcy”).² ORBCOMM LLC is a newly-formed company established with the intent of recovering the ORBCOMM System from the Bankruptcy to ensure to continued provision of service to customers located throughout the world.

As demonstrated in Petitioner’s concurrently-filed Fee Waiver Request, after more than a year of diligent effort in a very difficult environment, the company is beginning to realize the prospect of positive growth in its business. Nevertheless, the company continues to operate on a very tight negative cash flow basis. Furthermore, Petitioner is expending substantial resources to, among other things, define and engineer the next-generation ORBCOMM constellation; an effort that is capital-intensive and *critical* to the future of its business. These factors, when combined with the difficulties inherent to raising new investment capital in the current economy, force Petitioner to conduct its affairs on an extremely constrained budget.

Petitioner simply cannot afford to pay any filing fee in connection with its submission of the ORBCOMM Request without suffering financial hardship that could quickly lead to

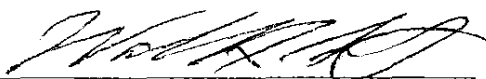
² See *License Assignment Order and Authorization*, 17 FCC Rcd. 4496 (2002); *consummation*, Letter to Donald Abelson, Chief, FCC International Bureau, from Walter H. Sonnenfeldt, Counsel to ORBCOMM, Application File Nos. SAT-ASG-20010726-00068, SES-ASG—20010726-01401, SES-ASG—20010726-01397, 0050-EX-AL-2001, and 0053-EX-AL-2001 (filed May 3, 2002) See, **a 11**, *ORBCOMM Global, LP, et al*, Chapter 11 Bankruptcy Proceedings, Case Nos. 00-3636 through 00-3643, United States Bankruptcy Court for the District of Delaware. By the above-referenced license assignment authorization ORBCOMM also took assignment of other FCC licenses associated with the ORBCOMM System United States ground segment issued under FCC Call Signs E940534—E940538 & E990057 -- E990061.

Petitioner being forced to substantially curtail or even completely discontinue its operations and the services it provides to its customers. Thus, it is not so much a question of whether Petitioner meets the fee waiver standard *of financial hardship*; it is a question of Petitioner's very survival. These are clearly "extraordinary and compelling circumstances" "outweighing the public interest in recouping the cost of the Commission's regulatory services".³

For the above-stated reasons, good cause exists for the deferral of fee payment obligations I-requested herein, and the public interest, convenience and necessity will be well-served by grant of the instant petition.

Respectfully submitted,

ORHCOMM LLC & ORBCOMM LICENSE CORP

By: 
Walter H. Sonnenfeldt

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14732 Jaystone Drive
Silver Spring, Maryland 20905
(301) 354 - 5699

Their Atomcy

September 30, 2002

³ See, e.g., *Implementation of Section 9 of the Communications Act — Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year and Amendment of the Schedule of Application Fees and Rules*, 10 FCC Rcd. 12759 (1995), at ¶ 29